

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
FCC Form 325 Data Collection	)	MB Docket No. 17-290
	)	
Modernization of Media Regulation Initiative	)	MB Docket No. 17-105

**COMMENTS OF  
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”)<sup>1</sup> submits these comments in response to the Notice of Proposed Rulemaking in the above-captioned docket.<sup>2</sup> We applaud the Commission for launching a proceeding to take a “fresh look” at the Form 325,<sup>3</sup> and urge swift action to eliminate the outdated and burdensome reporting requirement.

**INTRODUCTION AND SUMMARY**

The Commission launched its media modernization initiative last year “to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome.”<sup>4</sup> The Form 325 requirement at issue in the instant proceeding is a prime example of an unnecessary regulatory burden. The Commission can safely eliminate it without harming the public interest.

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<sup>1</sup> NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving approximately 85 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing more than \$275 billion over the last two decades to deploy and continually upgrade hybrid fiber-coaxial cable (HFC) networks and other infrastructure. Cable companies also provide state-of-the-art competitive voice service to more than 30 million customers.

<sup>2</sup> See *In re FCC Form 325 Data Collection, Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 9902 (2017) (“*Notice*”).

<sup>3</sup> See *id.* ¶ 1.

<sup>4</sup> FCC, Public Notice, *Modernization of Media Regulation Initiative*, 32 FCC Rcd 4406 at 1 (2017).

Cable operators serving most of the nation's cable customers must complete the form annually, which requires system personnel to report detailed operational data. This requirement was instituted more than 50 years ago, when there may have been some need for the Commission to have access to otherwise unavailable information to help inform its development of early cable regulatory policy. It makes little sense to impose this burden today. Cable is but one of the many participants in the video marketplace yet it alone must provide this competitively sensitive information. Moreover, there is no demonstrated need for the routine collection of data using Form 325 to support the Commission's policy initiatives and decision making because much of the information collected on the form is redundant, insufficiently useful, or available from other sources.

In short, as Commissioner O'Rielly observed, much of the Form 325 information can be derived from "alternative sources. . . , does not reflect today's competitive video marketplace, does not apply to cable competitors, and does not serve an actual purpose. In fact, it is unclear whether the FCC actually uses the data provided."<sup>5</sup> For the reasons described herein, the Commission should no longer require cable operators to routinely provide this information.

**I. FORM 325 IS BURDENSOME AND UNNECESSARILY STRAINS LIMITED RESOURCES.**

Currently, all cable systems with more than 20,000 subscribers, along with a random sampling of smaller operators, must file a Form 325.<sup>6</sup> Each year the Commission notifies each cable system that must file, instructing them to file the form electronically within 60 days from

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<sup>5</sup> Notice at 9928 (Statement of Commissioner Michael O'Rielly).

<sup>6</sup> See Notice ¶ 2; 47 C.F.R. § 76.403. All cable systems with 20,000 or more subscribers must file the form annually. In addition, each year a random sampling of smaller systems must file the form after being notified by the Commission to do so. See *id.*

the date of the notification letter.<sup>7</sup> Among other things, Form 325 seeks operational information – on a cable system basis – including subscriber numbers, equipment, plant information, frequency and signal distribution information, and programming (including full channel line-ups).<sup>8</sup> Given that the Form 325 collects competitively sensitive information, many cable operators seek confidential treatment of it.<sup>9</sup>

Completing the current Form 325 consumes significant internal and external resources.<sup>10</sup> Cable operators typically rely on in-house personnel to gather and verify the required information from a variety of internal departments, including engineering, operations, accounting, programming, marketing, and legal/regulatory. Depending on internal workload and resources, some operators must hire contract workers to input the form data. In addition, outside counsel often must be retained to ensure that sensitive Form 325 data is provided confidential treatment.

Operators must devote many hours every year to completing Form 325s – and all over a short time period. According to the Form 325 itself, responses “will take an average of 2 hours” per form.<sup>11</sup> In reality, feedback from NCTA members suggests that the time required to compile, verify, format, and submit the data per form significantly exceeds that estimate. Several cable operators reported to NCTA that it generally takes four to five hours per form. Meanwhile, some

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<sup>7</sup> See Notice ¶ 2.

<sup>8</sup> See *id.* & Appendix B.

<sup>9</sup> See Notice ¶ 24.

<sup>10</sup> See *id.* ¶ 5. As the Notice indicates, “no commenters argued in favor of retaining the form.” *Id.*

<sup>11</sup> FCC, Annual Report of Cable Television Systems, Form 325 (Notice at Appendix B). The “estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response.” *Id.*

smaller operators reported requiring an even larger time commitment, with an average of eight to ten hours necessary to complete each form.

Larger operators may be required to file 200 or more Form 325s each year, which represents 20 weeks of employee time, compressed into the Commission's tight 60-day turn-around time.<sup>12</sup> Even if each form only took 2 hours to complete, a larger operator would still need to devote 10 weeks' worth of employee time to comply.

Several cable operators reported that the formatting of the data requested on Form 325 is unnecessarily burdensome because it is inconsistent with how information is retained for business purposes. For example, it is especially burdensome to conform channel line-up information to the Form 325 format, which differs significantly from how the information is formatted to communicate with subscribers, or for other business uses.

In sum, cable operators – and cable operators alone – must devote a significant amount of their limited resources toward fulfilling this regulatory obligation. This burden simply cannot be justified given the competitive landscape.<sup>13</sup> As Commissioner Carr observed, “[w]e should allow these service providers to focus their time and resources on competing for customers in today’s dynamic video marketplace, not filling out FCC forms.”<sup>14</sup>

## **II. THESE BURDENS CAN NO LONGER BE JUSTIFIED.**

Form 325 originally dates back to 1966, and the Commission adopted the annual filing requirement in 1971.<sup>15</sup> Early justifications for the Form 325 included a one-time need for basic

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<sup>12</sup> 200 forms x 4 hours each = 800 hours per year. 800 hours/40 hour work week = 20 weeks of employee time. Numerous employees are typically involved in the effort.

<sup>13</sup> In light of the significant burdens involved with this requirement, the Commission should suspend use of Form 325 during the pendency of this proceeding.

<sup>14</sup> Notice at 9929 (Statement of Commissioner Brendan Carr).

<sup>15</sup> See *In re Amendment of Subpart L, Part 91 et al.*, Second Report & Order, 2 F.C.C.2d 725 (1966); *In re Amendment of Part 74*, Third Report & Order, 32 F.C.C.2d 13 (1971) (“1971 Order”).

information to inform the development of policies and rules applicable to the cable industry,<sup>16</sup> and later as an annual requirement, “to make possible further informed regulatory judgments” based on data tracking the development of the cable industry.<sup>17</sup> Nevertheless, for several years the Commission did not even issue the form.<sup>18</sup>

The Commission narrowly voted to reinstate the Form 325 requirement in 1999.<sup>19</sup> The *1999 Reinstatement Order*, among other things, specifically referenced the need for the Form 325 data collection at that time for “making policy decisions in matters relating to such issues as digital television broadcast signal carriage” and “collecting information regarding the conversion of cable service from analog to the digital medium.”<sup>20</sup>

These outdated justifications no longer can support requiring the routine compilation of cable-specific data. As the *Notice* explains, “[t]here have been significant changes in the multichannel video programming distributor (MVPD) marketplace and in the way cable systems operate since the Commission last examined the requirement to file Form 325 almost two

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<sup>16</sup> See 1971 Order ¶ 4 (noting the “one-time CATV questionnaire” issued in 1966).

<sup>17</sup> See *id.* ¶ 3.

<sup>18</sup> See *In re 1998 Biennial Regulatory Review – “Annual Report of Cable Television Systems,” Form 325, filed pursuant to Section 76.403 of the Commission’s Rules*, Report & Order, 14 FCC Rcd 4720 ¶ 4 (1999) (“*1999 Reinstatement Order*”) (noting that the Form 325 was not issued since 1994 due to demands on Commission staff). Almost two decades ago, NCTA explained that the annual submission of Form 325 served no identifiable regulatory or policy purpose and urged its elimination. See NCTA Comments, CS Dkt. No. 98-61, at 3 (filed June 30, 1998).

<sup>19</sup> See *1999 Reinstatement Order* at 4742, Dissenting Statement of Commissioner Harold Furchtgott-Roth (explaining that, (1) “the collection of this information is not statutorily required, nor does the item identify any specific, statutorily-based purpose for this information once collected. [T]he fact that we have not collected this information for the last four years undermines the assertion of actual need for it,” (2) “any information that we need in order to make regulations governing cable operators can be obtained in the context of specific rulemakings;” and (3) “any rationale for the collection of this information loses force when the filing requirement is not applied evenly to all cable operators”); *id.* at 4743, Dissenting Statement of Commissioner Michael Powell (“[T]here is no statutory requirement that the Commission collect the information required by this form. Indeed . . . the Commission has not collected the information since 1994. . . . There is no reason to assume . . . that general information about cable operators is not available from private sources or industry groups. . . .”).

<sup>20</sup> See *1999 Reinstatement Order* ¶¶ 15-16.

decades ago.”<sup>21</sup> The cable-only Form 325 requirement does not reflect today’s cable system operations or marketplace realities.

Furthermore, the Form 325 requirement does not recognize the technical realities of cable service today. For example, the form seeks data on analog operations, even though the Commission has elsewhere acknowledged that digital cable service is now “widespread.”<sup>22</sup> In addition, the Form 325 data must be compiled and filed on a system by system basis, even though individual systems are no longer representative of today’s cable network structure due to the use of fiber interconnects and the elimination of numerous stand-alone headends.

Moreover, there is no convincing need for the routine collection of data using Form 325 “to support the Commission’s policy initiatives and decision making or to inform reports to Congress”<sup>23</sup> because much of the cable industry-specific information collected on the form is redundant, insufficiently useful, or available from other sources. The *Notice* itself provides examples of where Form 325 seeks the collection of redundant information, tentatively concluding that the Commission “should eliminate the collection of modem and telephony subscriber data via Form 325 because similar data is collected via FCC Form 477.”<sup>24</sup> In addition, the Commission notes that information on the average number of leased access channels is provided in the Commission’s annual report on cable industry prices.<sup>25</sup> Other Form 325 information is collected as part of the Commission’s annual statutorily-mandated cable price

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<sup>21</sup> *Notice* ¶ 1.

<sup>22</sup> *In re Cable Television Technical and Operational Standards*, Report & Order, 32 FCC Rcd 7754 ¶ 3 & n.4 (2017) (“*Cable Technical Standards Order*”) (citing to SNL Kagan, S&P Global Market Intelligence, *Top Cable MSO’s Report*, June 2017, which reports that “almost 97 percent of cable video customers subscribe to digital service, and all major operators provide digital service”).

<sup>23</sup> *Notice* ¶ 7.

<sup>24</sup> *Id.* ¶ 15.

<sup>25</sup> *See id.* ¶ 7.

survey, including system type, number of households passed, certain subscriber information, broadcast carriage information, and channel line-ups.<sup>26</sup> Moreover, with respect to channel line-ups, the *Notice* explains that information “is available from online sources, including on cable operator websites and from third-party guide services.”<sup>27</sup> Furthermore, certain cable operator information is available in filings made with the Securities and Exchange Commission and the Copyright Office.<sup>28</sup> To the extent that the Commission needs technical performance data from cable operators, it collects such information through other processes.<sup>29</sup> Finally, annual regulatory filings provide information on cable operator subscriber numbers (in aggregate for the cable operator) and CARS licenses.<sup>30</sup>

Meanwhile, the routine collection of Form 325 data is insufficiently useful. Any information necessary to inform the Commission in crafting regulations governing MVPDs can be obtained in the context of specific rulemakings. In many instances, video competition proceedings or other specific rulemakings may be a more appropriate way to collect MVPD information since Form 325 only seeks data from one type of MVPD.

Finally, to the extent that the Commission requires certain industry information, it can be

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<sup>26</sup> See Cable Service Price Survey, FCC Form 333. Moreover, the *Notice* explains that channel line-up information is redundant since it “is available from online sources, including on cable operator websites and from third-party guide services.” *Notice* ¶ 19. We note that cable channel line-up information is also available as part of the Commission-hosted online public file database (either in substance or via a link to the operator’s web site). In addition, the collection of broadcast carriage election information from cable operators via Form 325 is redundant because the Commission requires each broadcast television station to indicate carriage elections in their station’s online public file.

<sup>27</sup> *Notice* ¶ 19. We note that channel line-up information is also available as part of the FCC’s online public file database (either in substance or via a link to the operator’s web site).

<sup>28</sup> The number of homes passed by a cable operator is typically included in filings with the Securities and Exchange Commission. Every cable system is required to file with the Copyright Office, on a semi-annual basis, certain information concerning activated channels.

<sup>29</sup> See, e.g., *Cable Technical Standards Order* (updating the Commission’s digital technical rules).

<sup>30</sup> CARS license information is also available in the Commission’s Cable Operating and Licensing System (“COALS”) database.

obtained from commercial sources -- without the accompanying regulatory burdens on individual companies. Indeed, the Commission's video competition reports rely heavily on commercial sources for cable operator data, especially SNL Kagan.<sup>31</sup> Other commercial sources mentioned in the *Notice*, including Nielsen, BIA/Kelsey, and Warren Communications, can also provide important information.<sup>32</sup>

## CONCLUSION

Consistent with the foregoing, it is time for the Commission to eliminate the Form 325 requirement.

Respectfully submitted,

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<sup>31</sup> See *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568 (2017) (citing to “SNL Kagan” 176 times, with zero cites to Form 325 data).

<sup>32</sup> See *Notice* ¶ 9 & n.31; see also *id.* at 9928 (Statement of Commissioner Michael O’Rielly) (“All of this information is publicly available from a host of alternative sources, including SNL Kagan, Nielson, and Warren Communications”).